

MUR 5887

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2007 FEB -6 A 10 47

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

My name is David Keating. My address is Citizens Club for Growth, 2001 L St. NW, Suite 675, Washington DC 20036.

In a letter dated December 13, 2006 regarding the complaint I filed last year, I was notified that the Commission has "numbered the matter MUR 5887." The letter stated that "should you receive any additional information in this matter, please forward it to the Office of the General Counsel."

I have received additional information that is highly relevant to MUR 5887. I am therefore following the Commission's request to forward it to your office. As you can see, this information proves that massive violations occurred as alleged in my original complaint.

The information is from a new book titled Freshman Orientation: House Style and Home Style by Edward I. Sidlow and published by CQ Press, a division of the highly respected Congressional Quarterly. The book is "The Story of Rep. Joe Schwarz's First Term in the U.S. House of Representatives."

The information in the book is highly credible. It was written by a professor of political science at Eastern Michigan University who has published numerous books and articles. The author has a PhD from Ohio State University.

On page viii of the Preface, the author notes that "While meeting with the congressman or his staff, I always carried a microcassette recorder equipped with an internal microphone, along with a ready supply of batteries and unused tapes." Clearly, the author was meticulous in his reporting.

The book includes information that documents extensive coordination between the Schwarz campaign and his purportedly "independent" supporters, including the Republican Mainstreet Partnership and/or Republican Mainstreet Partnership PAC.

I have enclosed the relevant pages of this new book that document some of the coordination activities.

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On page 154 of the book it quotes Matt Marsden, Schwarz's campaign manager, as follows:

"I worked hard to impress upon organized labor and the teachers that while I realized that they were not quick to endorse a Republican, Schwarz was clearly their best hope, and that Walberg was basically against everything they stood for. They made clear commitments to us that they would marshal their troops and get out the vote. Labor failed us and did not live up to their commitments. ... The MEA [Michigan Education Association] failed us - 13,000 people we communicated with and their leadership assured us they would get out their vote, and they just did not turn out. Main Street did not deliver as they promised they would. They promised to do television ads to counter Club for Growth's early ads, and I hounded them to get their pro-Schwarz stuff on the air, and they kept telling me, it's on its way. Yeah, well, when it arrived, more than a month after they promised, it was too little too late....All of these groups should be kicking themselves everyday." [Emphasis added, ellipses in original text.]

Former Congressman Joe Schwarz's campaign or its agents illegally exercised control over a group that reported "Independent Expenditures," in violation of 2 U.S.C. 431 and 2 U.S.C. 441a and 11 C.F.R. 109. In short, his campaign illegally coordinated with at least one outside group.

As I noted in the original complaint, 11 C.F.R. 109.21(a) states that "A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication: (1) Is paid for by a person other than that candidate, authorized committee, political party committee, or agent of any of the foregoing; (2) Satisfies at least one of the content standards in paragraph (c) of this section; and (3) Satisfies at least one of the conduct standards in paragraph (d) of this section."

According to one TV ad run by the RMSP PAC (see Exhibit C of my original complaint, a storyboard prepared by CMAG) and Form 24 filed by the RMSP PAC on July 28, the communication was paid for by RMSP PAC. Therefore, test 1 is met.

One of the content standards is "A public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office." This standard under test 2 is clearly met as the ad expressly advocates the defeat of Congressman Schwarz's opponent, Tim Walberg.

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Finally, all of the conduct standards under test 3 under 11 C.F.R. 109.21 were met. These standards include any one of the following:

(1) Request or suggestion.

(i) The communication is created, produced, or distributed at the request or suggestion of a candidate or an authorized committee, political party committee, or agent of any of the foregoing; or

(ii) The communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, political party committee, or agent of any of the foregoing, assents to the suggestion.

(2) Material involvement. A candidate, an authorized committee, a political party committee, or an agent of any of the foregoing, is materially involved in decisions regarding:

(i) The content of the communication;

(ii) The intended audience for the communication;

(iii) The means or mode of the communication;

(iv) The specific media outlet used for the communication;

(v) The timing or frequency of the communication; or

(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(3) Substantial discussion. The communication is created, produced, or distributed after one or more substantial discussions about the communication between the person paying for the communication, or the employees or agents of the person paying for the communication, and the candidate who is clearly identified in the communication, or his or her authorized committee, or his or her opponent or the opponent's authorized committee, or a political party committee, or an agent of any of the foregoing. A discussion is substantial within the meaning of this paragraph if information about the candidate's or political party committee's campaign plans, projects, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication.

The Schwarz campaign met all three of the conduct tests, even though only one would suffice for a violation in combination with the other facts in this MUR.

As noted by Mr. Marsden, he "hounded" the RMSP and RMSP PAC "to get their pro-Schwarz stuff on the air." Clearly, hounding is by any reasonable interpretation a "request or suggestion" by the candidate under the test in paragraph 1.

Further, Marsden indicated that RMSP or RMSP PAC or both "promised to do television ads." That meets the test in paragraph 2 that counts the "means or mode of the communication," and it appears to meet several of the other tests in the same paragraph.

Finally, paragraph 3's test for substantial discussion also was met. Again, Mr. Marsden said "I hounded them to get their pro-Schwarz stuff on the air, and they kept telling me, it's on its way." Clearly this indicates that multiple discussions occurred and multiple promises were made by RMSP or RMSP PAC.

In conclusion, the Schwarz campaign and his agents have committed numerous violations of the election law.

We strongly urge the Commission to fully investigate these massive violations, penalize these violations and take action to prevent further violations.

The above information is true and correct to the best of my knowledge, information, and belief.


David Keating

Washington, D.C.

Subscribed to and sworn before me this 7th day of January, 2007


Notary Public

My Commission Expires: July 31, 2011

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EDWARD I. SIDLOW



FRESHMAN
ORIENTALISM

HOUSE STYLE AND HOME STYLE

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FRESHMAN ORIENTATION

House Style and Home Style

Edward I. Sidlow

Eastern Michigan University



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happy to find a willing subject in Joe Schwarz, a physician who was seeking the Republican Party's nomination in my home congressional district in Michigan. I knew that the experience would inform my teaching in classes on legislative politics, but I also suspected that there might be a good story or two in it.

I started following Joe around in the summer of 2004, as he ran in the Republican primary for a seat in the U.S. House of Representatives in Michigan's Seventh District. Joe won that election handily, and I followed him to Washington, D.C., for his first days on Capitol Hill. From the inauguration of the 109th Congress through the elections of November 2006, I stayed in regular contact with the Schwarz operation, visiting with the congressman in Washington or with his staff in Michigan at least once a month. I also met with Joe on some of his many trips back to the district, and I went to Washington when there were functions on his schedule that could illustrate the varied aspects of a congressman's workload. Finally, I observed various events in the campaigns that the Schwarz team ran in 2006.

The election season of 2006 offered up one additional and very timely lesson. As most readers who follow politics closely already know, Schwarz, a moderate Republican, ended up losing his bid for reelection in the bruising Michigan primaries in the summer of 2006. In the final chapter I place Schwarz's experience in the broader context of the tumultuous 2006 election season.

The events reported in this book are based on observation, interviews, and secondary source data. Press accounts of relevant material and some nationally archived election data help to tell a more complete story. While meeting with the congressman or his staff, I always carried a microcassette recorder equipped with an internal microphone, along with a ready supply of batteries and unused tapes. I recorded my own observations as well as answers to questions that I posed to those involved in the events of the moment. At various times, I conducted lengthy interviews with the congressman, his staff, and members of the congressman's inner circle. Frankly, I took my opportunities when they were available. To label this approach a "methodology" is generous, but I am nonetheless indebted to Richard Fenno, whose pathbreaking work has made it easier to

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"Somehow, some way," Joe concluded, "moderates must understand that they will go the way of the moa, the dodo, and, appropriately, the woolly mammoth unless they learn to fight as hard for the policies of the sane and rational center as the far right and far left fight for the extremes."¹⁵

When asked to reflect on his term in Congress, Schwarz noted his frustration with the group dynamic of the House Republicans. "There was no cohesive Republican Party," he observed. "It's very balkanized... North vs. South, religious right vs. moderates. There's very little sense of 'What's best for the country?' In many ways, it's reminiscent of the Democratic Party of the late 1950s and 60s, when southern Democrats were so far removed from the rest of the party." Joe continued, "You know, there are a good many Americans who are moderate, many in both parties, but there is no way to make them cohesive. Many believe that this country needs a third party, a middle party, but it would certainly take a seismic political event for that to happen."

The congressman took some comfort in comments made to him when he returned to Washington after the primary. Duncan Hunter, chairman of the House Armed Services Committee, bemoaned Joe's loss, saying, "Gee, Joe, I got 62 members of this committee with far too few combat veterans... you show up and I'm delighted... another combat veteran. And you have to go and lose... this does not make me happy." Bob Goodlatte, chair of the House Agriculture Committee, offered similar sentiments: "I finally get someone with an interest in and an understanding of veterinary medicine issues, and then I lose him... isn't that just great." Joe was gratified to know that both of these legislators had valued his participation as a member of their committees.

Joe Schwarz was not happy ending his electoral career with a loss in the primary. "I'm a graceful loser," he said, "but not a good one. I'm just not sure what I'll do long-term. For now, I'll practice medicine... I'm already back to a day of surgery a week, but..."

Again, Matt Marsden was less philosophical: "We never thought we were a lock... We knew our '04 victory was the result of all of those conservatives splitting up the right-wing vote." But he was not shy about placing blame for the low turnout that contributed to his candidate's loss in 2006:

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I worked hard to impress upon organized labor and the teachers that while I realized that they were not quick to endorse a Republican, Schwarz was clearly their best hope, and that Walberg was basically against everything they stood for. They made clear commitments to us that they would marshal their troops and get out the vote. Labor failed us and did not live up to their commitments. ... The MEA [Michigan Education Association] failed us—13,000 people we communicated with and their leadership assured us they would get out their vote, and they just did not turn out. Main Street did not deliver as they promised they would. They promised to do television ads to counter Club for Growth's early ads, and I hounded them to get their pro-Schwarz stuff on the air, and they kept telling me, it's on its way. Yeah, well, when it arrived, more than a month after they promised, it was too little too late. ... All of these groups should be kicking themselves everyday. Walberg did not win... apathy and disinterest won. We'll be back. ...

At those final words, the events of the past two years flashed by in my mind, and I found myself wondering... was Joe Schwarz just taking some time off between his freshman and sophomore terms?